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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

CHARLES JUSTIN KELLER,

Defendant and Appellant.

D076877

(Super. Ct. No. SCD264642)

APPEAL from an order of the Superior Court of San Diego County, Esteban Hernandez, Judge. Affirmed.

Patricia J. Ulibarri, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

In 2017, a jury convicted Charles Keller of two counts of assault with true findings of gang allegations (Pen. Code,¹ § 245, subd. (a)(1); 186.22, subd. (b)(1)). Keller admitted three strike priors (§ 667, subds. (b)-(i) and one serious felony prior conviction (§ 667, subd. (a)(1)).

¹ All further statutory references are to the Penal Code.

The court struck two of the "strike" priors and sentenced Keller to a determinate term of 17 years eight months in prison.

Keller appealed and this court affirmed the judgment in an unpublished opinion (*People v. Keller* (Jan. 18, 2019, D072199, D072974) [nonpub. opn.]). We vacated the sentence and remanded to permit the court to exercise newly acquired discretion under section 1385 to consider striking the serious felony prior.

At the resentencing hearing, the trial court recognized its discretionary authority but declined to strike the prior in the furtherance of justice and imposed the same sentence.

Keller filed a timely notice of appeal.

Appellate counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) indicating she has not been able to identify any arguable issues for reversal on appeal. Counsel asks the court to review the entire record for error as mandated by *Wende*. We offered Keller the opportunity to file his own brief on appeal, but he has not responded.

STATEMENT OF FACTS

The facts of the offenses are set forth in our previous opinion. (*People v. Keller, supra*, D072199, D072974.) It is sufficient here to note, Keller was a member of a prison gang called the Deadskins. Keller and four others assaulted two other inmates in their cells.

DISCUSSION

As we have noted appellate counsel has filed a *Wende* brief and asks the court to review the record for error as mandated by *Wende*. To assist the court in its review of the record and in compliance with *Anders v. California* (1967) 386 U.S. 738 (*Anders*), counsel has identified the following possible issues counsel considered in evaluating the potential merits of this appeal:

1. Whether the court abused its discretion in denying Keller's motion to strike the serious felony prior; and

2. Whether Keller is entitled to additional custody credits from the time he was resentenced until disposition of his request for postjudgment relief.

We have reviewed the entire record as required by *Wende* and *Anders*. We have not discovered any arguable issues for reversal on appeal. Competent counsel has represented Keller on this appeal.

DISPOSITION

The order denying Keller's motion to strike the serious felony prior is affirmed.

HUFFMAN, J.

WE CONCUR:

BENKE, Acting P. J.

HALLER, J.